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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

DOCKET NO. 920.

WRIGHTSMAN PETROLEUM COMPANY, a Corporation, for itself and C. J. WRIGHTSMAN, its sole stockholder and beneficiary in dissolution, *Petitioner*,

v.

THE UNITED STATES.

REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION.

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Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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As pointed out in respondent's Brief in Opposition (Br. 12), this Court on April 28, 1941, granted a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Kales,* No. 826 this Term. In its petition for a writ of certiorari to the said Circuit Court of Appeals, the Government in that case urged as a reason for granting the writ that the taxpayer's unsworn letter of protest of March 23, 1925, which the Circuit Court of Appeals had held to be an informal claim for refund, could not in any view be treated as a proper claim (Pet. 11-13).

In granting the writ in that case this Court evidently thought it a matter of great importance in the administration of the revenue laws to review the decision in the lower Court. By the same token this Court should review the decision of the Court of Claims herein and consider the two cases together in the respect that they involve the narrow question whether a protest or notice to the Commissioner can be deemed a claim for refund subject to perfection by a formal claim.

In the *Kales* case the Circuit Court of Appeals held that the taxpayer's letter of protest was clear notice to the Commissioner and therefore constituted an informal claim which was subsequently perfected by the filing of a formal claim. In the instant case the Court of Claims specifically held that the Commissioner was informally placed on notice in the form of a protest, but this did not suffice as a claim for refund (R. 37). On this issue, therefore, the two decisions are clearly in conflict and respondent's statement that the grounds upon which this suit was based were never called to the Commissioner's attention prior to the filing of the claim now relied upon would seem to be erroneous (Resp. Br. 14).

Should this Court affirm the decision by the Circuit Court of Appeals in the *Kales* case on the question whether a protest is to be deemed a claim for refund, then the decision of the lower Court herein will be clearly wrong. This petitioner would be highly prejudiced, however, and its rights irrevocably lost if in the meantime this petition were denied, because the judgment of the Court below could not be reopened.

Aside from the issue whether a notice or protest can be deemed a claim for refund, the instant case presents a broader and more far reaching question of great importance to the Government and taxpayers generally. Here the Commissioner made a full audit and examination of petitioner's affairs following the filing of a formal claim and was fully apprised of the deductions and facts in support thereof ultimately claimed in the amendment of March

4, 1935. Hence, the important Federal tax question arises as to the permissibility of said amendment under those circumstances within the ambit of this Court's decision in *United States* v. *Andrews*, 302 U. S. 517, 82 L. ed. 398, and the language therein, and *United States* v. *Garbutt Oil Company*, 302 U. S. 528, 82 L. ed. 405.

While the question whether an amended claim is permissible where the Commissioner has already been apprised by audit or otherwise of the items and facts in support thereof claimed in the amendment may have lurked in the record in the Court below in the *Kales* case, this question was not raised in the Government's petition for writ of certiorari. Therefore, the present case, together with the *Kales* case, ought to clarify the law in the field this Court left open in the *Andrews* case as to the sufficiency of a detailed examination and audit of particular items and the facts in support thereof subsequently perfected by a formal claim.

CONCLUSION.

Therefore, because of the reasons stated in its petition for a writ and because of the foregoing, petitioner respectfully requests that its petition for a writ of certiorari be granted.

Respectfully submitted,

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